A.F.R.

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.390 of 1990

Govind and two others

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

JUDGMENT

Post for 04.04.2007

Sd/-
SUNIL KUMAR SINHA
Judge

A.F.R

27

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO.390 OF 1990

Appellants:

1. Govind, s/o Revaram Sahu, aged about 45 years,
2. Devchand, S/o Govindram Sahu, aged about 22 years,
3. Bhajiharin alias Indiyabai, wife of Govind Sahu, aged about 40 years

All residents of Jarhagaon, P.S. Mungeli, Distt. Bilaspur (M.P).

Versus

Respondent: State of Madhya Pradesh (Now Chhattisgarh)

Appearance:

Shri Indrasen Sahu, counsel for the appellants.

Shri Arun Sao, Govt. Advocate for the State.

JUDGMENT
(04.04.2007)

Sunil Kumar Sinha, J,

(1) This appeal is directed against the judgment of conviction and order of sentence dated 26th of March, 1990 passed in Sessions Trial No.109/1988 by the 3rd Addl. Judge to the Court of Sessions Judge, Bilaspur, whereby the learned Sessions Judge, while acquitting the appellants u/ss 306 & 342 IPC, convicted them u/s 498-A IPC and sentenced to undergo R.I. for 3 years.

(2) The brief facts are that the deceased namely Smt. Krishna Bai was married to the eldest son of appellants no.1 and 3 namely Ramesh Kumar (not an accused in this case) in the year

1986. On 25.12.1987, she received burn injuries to the extent of 80% while she was residing in her in-laws' house. She was taken to the Primary Health Centre, Takhatpur, from where she was referred to the District Hospital, Bilaspur, where she died during the course of her treatment on 29.12.1987. The incident was reported by the appellant Govind (brother-in-law of the deceased) to the Police Outpost Jerhagaon saying that the deceased had put herself on fire on account of severe pain in her stomach. This report was taken in *Rosnamcha* (Daily Diary) and the Investigating Officer Surjan Singh (P.W.14) had left for the scene of occurrence. He recorded a *Dehati Nalishi* and on the basis of *Dehati Nalishi* registered an offence u/s 498-A, 201 and 342 IPC and it was on his instance the deceased was sent to the Primary Health Center, Takhatpur. When the deceased was admitted in P.H.C., Takhatpur, Dr. V.K. Soni (P.W.5) examined her and ultimately her dying declaration (Ex.P-6) was recorded by the Executive Magistrate Shri J.R. Pradhan (P.W.6) and thereafter, she was referred to the District Hospital where she died on 29.12.1987. After her death, *Panchnama* of dead body was prepared by Head Constable Basant Kumar Sharma (P.W.9) and it was sent for postmortem, which was conducted by Dr.J.L. Shrivastava (P.W.10) and Dr. Vinay Gupta, who gave their opinion vide report Ex.P.10 that the cause of death was due to shock on account of burn injuries sustained by the deceased. During the course of investigation, statements of various witnesses including the father and mother of the deceased were recorded and after completion of investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Court of Sessions from where the matter was received on transfer by the Court of 3rd Addl. Sessions Judge, where the trial was concluded.

(3) The trial Court has convicted the appellants mainly on the basis of evidence of P.W.11 Lakhan Lal Sahu (father of the deceased), P.W.13 Chandabai, (mother of the deceased) and P.W.12 Hemlal, a neighbour of the in-laws of the deceased. While discussing their evidence, it has acquitted the appellants

u/s 306 and 342 of I.P.C., and has held vide para 15 of the judgment that an offence u/s 498-A has been proved against them.

(4) Learned counsel for the appellants argued that in the facts and circumstances of this case, an offence u/s 498-A is also not proved. His submission is that there is hardly any evidence of treating the deceased with cruelty or harassment and the conviction and sentence awarded for the said offence be set aside.

(5) On the other hand, learned state Counsel supports the judgment of the Sessions Court.

(6) I have heard learned counsel for the parties at length and have also perused the records of the Sessions Case.

(7) It is an admitted fact in the case that on 25.12.1987 at about 2.25 p.m., a dying declaration of the deceased was recorded by the Executive Magistrate G.R. Pradhan (P.W.6). In the dying declaration, there is a certification by Dr. V.K. Soni, Assistant Surgeon, Primary Health Center, Takhatpur, that the deceased was fully conscious and she was oriented to time, place and person and she was quite able to give statement. It is thereafter, the dying declaration was recorded by the Executive Magistrate, in which, the deceased stated that on account of illtreatment by mother-in-law and father-in-law, as they used to abuse her and she could not resist it, she put herself on fire by pouring kerosene over the body. She has also stated that on the last night (that would come as 24.12.1987) the brother-in-law, Devchand had also assaulted her and at that time, father-in-law and mother-in-law were sitting there. There is also an endorsement in the dying declaration that the same was read over to the deceased and she admitted it to be correct. This dying declaration also bears thumb impression of the deceased. Though the trial Court has not commented much on the dying declaration, but referring to the decisions in the matter of ***K. Ramachandra Reddy and another –Vs- The Public Prosecutor AIR 1976 S.C.1994; State (Delhi Administration)***

-vs- Laxman Kumar and others, AIR 1986 S.C. 250 and Narayan Vs- State of M.P. 1986 II M.P.W.N. 136, it said that since the dying declaration has not been recorded in question and answer form, the said declaration recorded by the Executive Magistrate cannot be held to be proved (Please see Para 10 of the judgment). This view taken by the trial Court appears to be unreasonable.

(8) In *K.Ramachandra Reddy's case(supra)* the Apex Court held that the dying declaration is undoubtedly admission u/s 32 and not being a statement on oath so that its truth could be tested by cross examination, the Courts have to apply the strictest scrutiny and closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. Yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration. It further held that a dying declaration which has been recorded by a competent Magistrate in proper manner, that is to say, in the form of questions and answers, and as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character. In order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts

stated had not been impaired at the time he was making the statement, by circumstances beyond his control; the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

(9) In *Delhi Administration's case (supra)* the Apex Court held the dying declaration as unacceptable on the ground that the dying declaration of burnt bride was recorded not by a Magistrate nor by a doctor but by the investigating officer without explaining the non availability of the Magistrate and Doctor. It was not signed by the deponent although literate and not proved to be incapacitated to sign by the burn injuries. The time of the statement was also not indicated in the document. At the time the declaration was recorded none of her relations were present. The fitness of the deponent to make a declaration was also doubtful. The dying declaration was also not recorded in the form of questions and answers.

(10) In *Narayan's case (supra)* the Division Bench of Madhya Pradesh High Court held that the dying declaration was unacceptable on the ground that the fitness of the deponent was doubtful and the time of the declaration was not noted and it was also not recorded in question and answer form and further that the said declaration was not put to accused in his examination under section 313 Cr.P.C.

(11) If we analyze the ratio of the judgments referred to by the trial Court on the point of genuineness of the dying declaration, it would appear that in none of the judgments it has been stated that if a dying declaration is not recorded in question and answer form, it would become unreliable or untrustworthy on the said ground alone. The Apex Court has only said that a dying declaration recorded in the proper manner, i.e., in the form of questions and answers and as far as possible in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral

testimony. This means that if the dying declaration is otherwise acceptable by a court of law on various characteristics of its genuineness, it will not be discarded by the Court only on the ground that the same was not recorded in question and answer form particularly when the court was fully satisfied regarding genuineness and truthfulness of the said declaration. Moreover, in the present case though a question has not been written in the said declaration but the overall contents of the dying declaration would show that a complete answer in relation to the relevant facts has been given by the maker in her own words and the same has been recorded in the first form by the Executive Magistrate after being satisfied by him regarding the fit mental condition of the deceased, for which, a certificate was also given by the Doctor. The Magistrate has read over the dying declaration to the deceased and it was admitted to be correct by the deceased and thereafter, the deceased has also put her thumb impression. Therefore, the trial Court erred in law in disbelieving the dying declaration merely on the ground that it was not written in question and answer form.

(12) The contents of the dying declaration are supported by the contents of the *Dehati Nalishi* Ex.P.11. This *Dehati Nalishi* has been recorded by Sub-Inspector Surjan Singh (P.W.14) on the statement of the deceased herself on 25.12.1987 when he had reached to the house of the deceased in the village and he had talked with the deceased. It was the first opportunity for the deceased to meet the Police Officer to whom she stated the entire story which contains about the cruel treatment by the appellants and also about beating given by the appellant no.2 (Dewar). She had clearly stated that on account of this, she had put herself on fire. She had also stated to the Sub-Inspector that one day prior to the date of incident, a quarrel took place as the brother in law (Dewar) made allegations that she had stolen and eaten two breads and on this she was beaten by him (appellant no.2) with *Danda* at the instance of two other appellants who were sitting there. This story given by the deceased in *Dehati Nalishi* and also in dying declaration is

further corroborated by the evidence of her father Lakhanlal Sahu (P.W.11) who has stated in para 4 of his deposition that when he asked to the deceased in the Hospital as to why she committed such an act, the deceased had narrated the story about making allegations for eating two more breads by her and on account of this, she was beaten by the brother-in-law on the instructions of her father-in-law and mother-in-law. He also deposed about the other previous instance, which also constitute the incidents of the cruelty against the deceased. Almost similar evidence has been given by Smt. Chanda Bai (P.W.13), mother of the deceased who has also stated the same facts pertaining to the incident of Marpit, which took place on the last night prior to the date of incident that is in the night of 24.12.1987 (Please see para 3 of her deposition).

(13) In the matter of ***Pawan Kumar and others –vs- State of Haryana (1998) 3 SCC 309***, the Apex Court observed that the "cruelty" or "harassment" need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of sections 304-B and 498-A IPC. Explanation (a) to Section 498A itself refers to both mental and physical cruelty. It further observed that again willful conduct means, conduct willfully done; this may be inferred by direct or indirect evidence which could be construed to be such. A girl dreams of great days ahead with hopes and aspirations when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for bride.

(14) In case of ***Gananath Pattnaik –Vs- State of Orissa (2002) 2 SCC 619*** the Apex Court further held that the concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even

mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

(15) The Apex Court also held in the matter of ***Mohd. Hoshan and Another -vs- state of A.P. (2002) 7 SCC 414*** that the impact of the complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty.

(16) In the present case, the evidence of physical cruelty is writ large on record. From perusal of the contents of dying declaration (Ex.P-6) and also the contents of *Dehati Nalishi* (Ex.P.11) which was the first version of the deceased to the Police, it comes that the deceased was beaten by the brother in law by Danda on the last night at the instance of mother-in-law and father-in-law on account of making allegations on the deceased that she belongs to a poor family and she has stolen and eaten two more breads. Not only this, even the husband, when he came back to the house on the next morning, did not respond to the deceased and he took out the food by his own hands and he then did not talk to the deceased. All this led to the deceased to put herself on fire by pouring Kerosene on her.

(17) In the facts and circumstances of this case, particularly in light of the evidence of father and mother i.e., P.W.11 & P.W.13 and also in light of dying declaration and further the contents of *Dehati Nalishi,* it is proved on record that in fact, the deceased was being treated with cruelty and was harassed by the appellants and she was beaten just one day prior to the date of incident by appellant no.2 at the instance of appellants No.1 & 3, due to which, she put herself on fire on the said date and the offence of treating with cruelty by the appellants are proved and the trial Court has rightly held them guilty for the aforesaid offence. There appears to be no illegality in the judgment of

conviction and order of sentence passed by the trial Court warranting interference by this court in this appeal. The appeal has no merit and the same is accordingly dismissed.

(18) The appellants are on bail. Their bail bonds are cancelled. They shall immediately surrender to the custody for undergoing the remaining jail sentences awarded to them.

Sd/-
SUNIL KUMAR SINHA
Judge

Rao